Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1858

NATIONAL CAUCUS OF LABOR COMMITTEES, U.S. LABOR PARTY, LYNDON H. LAROUCHE, JR., JENNY LEONARDO, NANCY SPANNAUS, ALAN YUE, KEN MANDEL, CAMPAIGNER PUBLICATIONS, INC., TONY CHAITKIN, THE NATIONAL UNEMPLOYED AND WELFARE RIGHTS ORGANIZATION AND THE INTERNATIONAL PRESS SERVICE,

Petitioners,

against

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW),

Respondent.

BRIEF IN OPPOSITION TO THE PETITION FOR CERTIORARI

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1858

NATIONAL CAUCUS OF LABOR COMMITTEES, U.S. LABOR PARTY, LYNDON H. LAROUCHE, JR., JENNY LEONARDO, NANCY SPANNAUS, ALAN YUE, KEN MANDEL, CAMPAIGNER PUBLICATIONS, INC., TONY CHAITKIN, THE NATIONAL UNEMPLOYED AND WELFARE RIGHTS ORGANIZATION AND THE INTERNATIONAL PRESS SERVICE,

Petitioners,

against

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW),

Respondent.

BRIEF IN OPPOSITION TO THE PETITION FOR CERTIORARI

Opinion Below

The opinion of the United States District Court for the Southern District of New York dated January 12, 1979 is reported at 466 F. Supp. 564 (S.D.N.Y. 1979) and is set forth in the Petitioners' appendix at page 25 *et seq.* On May 15, 1979 the United States Court of Appeals for the Second Circuit summarily affirmed on the basis of the January 12 opinion of the District Court (1a).*

* References to "(a)" are to the appendix following page 13 of this brief.

Jurisdiction

Jurisdiction of this Court rests on 28 U.S.C. § 1254(1).

Rules Involved

This appeal involves Canon 9 of the A.B.A. Code of Professional Responsibility and D.R. 9-101(B) of the A.B.A. Code of Professional Responsibility (9a).

Counterstatement of the Issues

1. Were the District Court's findings, adopted by the Court of Appeals, clearly erroneous in holding that the limited representation undertaken by Patterson, Belknap, Webb & Tyler (PBW&T)* did not involve the "same matter" for which two of its partners, former Deputy Attorney General Harold R. Tyler, Jr. and former Associate Deputy Attorney General Rudolph W. Giuliani had "substantial responsibility" when they were employed by the United States Department of Justice?

2. Were the findings of the District Court, adopted by the Court of Appeals, clearly erroneous that the former government employment of Messrs. Tyler and Giuliani did not give rise to "an appearance of impropriety" in connection with PBW&T's limited undertaking for the purpose of representing the UAW on the motions to dismiss or to disqualify its trial counsel?

---

* On March 23, 1978 the District Court ordered the appearance of PBW&T "as counsel for the plaintiff for the limited purpose of representing the plaintiff with respect to the defendants' motion to dismiss or to disqualify Roger L. Zissu, Esq., and the firm of Cowan, Liebowitz & Latman, P.C. the plaintiff's counsel herein, and to disqualify Steven Schlossberg, Esq." (3a).

3. Does the substitution of trial counsel for the Respondent and the denial of the Petitioners' motion to dismiss, the effect of which terminates the limited appearance of PBW&T in the action below, moot the issues raised by the Petition herein?

Counterstatement of the Facts

1. Introduction

The Petitioners, the National Caucus of Labor Committees, *et al.* ("NCLC"), seek reversal of an order of the United States Court of Appeals for the Second Circuit that summarily affirmed the denial of a motion filed by the NCLC to disqualify PBW&T. PBW&T was the firm retained by the UAW to defend against an earlier disqualification motion directed at the UAW's trial counsel in the underlying lawsuit (Cowan, Liebowitz & Latman, P.C., Roger L. Zissu, a member of that firm, and Stephen Schlossberg, all hereinafter referred to as "Cowan and Schlossberg").

2. The Underlying Lawsuit

The lawsuit underlying the two-tiered disqualification attack by the NCLC was brought by the UAW for trademark infringement, unfair competition and *prima facie* tort. The original complaint was filed over four years ago, on November 21, 1974.

3. The First Motion

On July 17, 1977, after the case had been placed on the District Court's ready trial calendar, the NCLC's counsel first raised and thereafter filed a motion to dismiss or disqualify Cowan and Schlossberg. The motion alleged that one Gregory Rose, a former political worker for the NCLC, was to be a witness for the UAW and that this former employee had been privy to certain legal conferences in late 1974 and interview notes of persons from which affidavits

were prepared and filed in connection with the NCLC's motion for summary judgment filed in January 1975. The NCLC also alleged Cowan and Schlossberg were privy to such confidential information and that Schlossberg used portions of this information in his communications with the Attorney General, the FBI, and the Secretary of Labor. The essential allegations were denied by Cowan and Schlossberg and Mr. Rose.

The District Court referred the motion to a U.S. Magistrate. After submission of voluminous affidavits and papers, the Magistrate recommended that Cowan and Schlossberg be disqualified on the ground that an "appearance of impropriety" existed, but refused to bar Mr. Rose as a witness. Pursuant to 28 U.S.C. § 636, the UAW filed objections to the Magistrate's Report and Recommendations.

Thereafter, D. Robert Owen, a partner of PBW&T, was requested to undertake representation of the UAW with respect to the motion directed against Cowan and Schlossberg and, on March 23, 1978, the District Court permitted the appearance of PBW&T for that limited purpose (3a).

4. The Second Motion

On March 30, 1978, even though no objections were voiced by the NCLC to the appearance of PBW&T, the NCLC's counsel advised the District Judge that PBW&T should withdraw because two of Owen's partners, Harold R. Tyler, Jr. and Rudolph W. Giuliani, at a time when the FBI was conducting a domestic security investigation of the NCLC, had been employed by the U.S. Department of Justice as Deputy and Associate Deputy Attorneys General.*

* The NCLC's scurrilous accusation in the disqualification motion and Petition (p. 23) that had PBW&T undertaken the matter five days earlier, Mr. Tyler would be criminally liable under 18 U.S.C. § 207 is inapposite and inappropriate. The one year ban contained in 18 U.S.C. § 207(b) applies only to situations unlike this case, "in which the United States is a party or directly and substantially interested."

The facts as to the functions of Tyler and Giuliani and how those functions may have touched on the Petitioners are fully set forth in the District Court's opinion—Not in the Petitioners' brief. See 466 F. Supp. at 569. It is sufficient to say that the administrative functions they performed, which occupied no more than an hour of their entire tenure in office, had nothing whatever to do with the representation of PBW&T in the instant matter.

5. Subsequent Events

On June 8, 1979, after affirmance of the District Court's judgment by the Court of Appeals, the District Court called a conference for June 19, 1979 to schedule the hearing on the underlying motion to dismiss and disqualify Cowan and Schlossberg. On June 14, 1979 the instant Petition was filed. At that conference the UAW, in order to put the case in a posture that would facilitate trial on the merits of the underlying trademark and unfair competition claims, proposed withdrawal of Cowan and Schlossberg and substitution of a third firm (Cooper, Dunham, Clark, Griffin & Moran, Esqs.) to try the lawsuit. On June 26, 1979 the District Court approved the proposed substitution of trial counsel, denied the Petitioners' motion to disqualify Cowan and Schlossberg as moot, and restored the case to its ready trial calendar (4a-8a). The effect of these orders was to terminate PBW&T's limited appearance (6a).

Summary of Argument

The Petitioners have fashioned a factual version of this case totally at odds with the record. The District Court's opinion is based on what in fact appears in the record. The Petitioners thus seek to convince this Court, based on their hypothetical recitations, that legal precedents have been misapplied by the courts below. In our view, the Court of Appeals committed no abuse of discretion in finding (by adopting the District Court's opinion) no relation be-

tween the matters before Messrs. Tyler and Giuliani at the Justice Department and the matters in this case, that Messrs. Tyler and Giuliani had no substantial responsibility for anything connected with the NCLC, and that PBW&T's limited appearance in this lawsuit created no appearance of impropriety.

In addition, the effect of the substitution of trial counsel and the denial by the District Court of the Petitioners' motion to dismiss renders moot the issues presented by this Petition.

ARGUMENT

The Petition Should be Denied

1. Introduction

A motion to disqualify counsel is a matter traditionally left to the sound discretion of the trial court. *W.T. Grant Co.* v. *Haines,* 531 F.2d 671, 676 (2d Cir. 1976); *Hull* v. *Celanese Corp.,* 513 F.2d 568, 571 (2d Cir. 1975).

2. The Ethical Standard

The NCLC purports to ground the disqualification of PBW&T on the spirit as well as the letter of Canon 9 and D.R. 9-101(B) of the Code of Professional Responsibility. Canon 9 provides:

> "A Lawyer Should Avoid Even the Appearance of Professional Impropriety"

D.R. 9-101(B) provides:

> "A lawyer shall not accept private employment in a matter in which he had substantial responsibility while he was a public employee."

The NCLC's approach to the application of the ethical constraint and the disciplinary rule has been to ignore the current state of the law with respect to the disqualification

of former government attorneys (ABA Formal Opinion 342, November 24, 1975 (62 A.B.A.J. 517) and Opinion No. 889 of the Association of the Bar of the City of New York (31 *The Record* 552)). As analyzed in the ABA Formal Opinion 342, "the issue of fact to be determined in a disciplinary action [under D.R. 9-101(B)] is whether a lawyer has accepted 'private employment' in a 'matter' in which he had 'substantial responsibility' while he was a 'public employee' " (62 A.B.A.J. at 519).

The decisive findings by the courts below were that the "matter" here presented is not a "matter" on which Mr. Tyler and Mr. Giuliani worked or of which they had knowledge while in government, and, even if it were assumed that such matters were the same, Mr. Tyler and Mr. Guiliani did not have "substantial responsibility" therefor.

A. Matter

It is sufficient to say that the issues raised in the underlying effort by the NCLC to disqualify Cowan and Schlossberg is the "matter" for which Mr. Owen of PBW&T was retained and the "only matter" for which his appearance was allowed. This is not a "matter" which Messrs. Tyler or Giuliani had any, much less substantial, responsibility while in government.

The questions before the District Judge were whether Gregory Rose, a former political worker for the NCLC, obtained by virtue of his alleged quasi-legal status at the NCLC confidences protected by the attorney-client privilege and turned those over to Cowan and Schlossberg. 466 F. Supp. at 572. Thus, unlike the factual situations in the cases referred to in the NCLC's Petition, PBW&T has not become involved in a case dealing with the same issues or matters that were before Messrs. Tyler and Giuliani when they were at the Department of Justice. *Compare Allied Realty of St. Paul, Inc.* v. *Exchange National Bank of Chicago,* 283 F. Supp. 464 (D. Minn. 1968),

aff'd, 408 F.2d 1099 (8th Cir. 1969), *cert. denied*, 396 U.S. 823 (1969); *Handelman* v. *Weiss*, 368 F. Supp. 258 (S.D.N.Y. 1973); and *General Motors Corp.* v. *City of New York*, 501 F.2d 639 (2d Cir. 1974) with *Allbrand Appliance & Television Co.* v. *Advent Corp.*, 78-2 Trade Cases ¶ 62,371 (S.D.N.Y. 1978); *City of Cleveland* v. *Cleveland Electric Illuminating Co.*, 440 F. Supp. 193 (N.D. Ohio 1977), *aff'd without op.*, 573 F.2d 1310 (6th Cir. 1977); *Control Data Corp.* v. *International Business Machines Corp.*, 318 F. Supp. 145 (D. Minn 1970); and *Campus Cleaners, Inc.* v. *Dallas Tailor & Laundry Supply Co.*, 77-2 Trade Cases ¶ 61,714 (S. D. Tex. 1977).

Mr. Tyler, while Deputy Attorney General, passed upon a Freedom of Information Act appeal of petitioner Nancy B. Spannaus; he did not review any documents relating to Mrs. Spannaus in connection therewith. Also, pursuant to the Attorney General's Guidelines for Domestic Security Investigations by the FBI, Messrs. Tyler and Giuliani reviewed a staff summary of and possibly an FBI summary prepared to justify the continuance of a domestic security investigation of the NCLC by the FBI. This decision did not entail any review of underlying FBI files or documents.

Thus, Mr. Tyler and Mr. Giuliani were concerned with whether or not the FBI had sufficient information that the NCLC and others were engaging in certain activities (which under the Guidelines must involve violence or potential violence constituting a possible violation of federal law for the purpose of overthrowing or interfering with the government of the United States or a state or depriving persons of their civil rights protected by federal law) to justify continuance of the investigation. And with respect to Mrs. Spannaus, Mr. Tyler's concerns involved statutory and departmental policy considerations related to public disclosure of FBI files under the Freedom of Information Act. What either has to do with what was before the District Court below on the first disqualification motion remains an undisclosed mystery.

B. Substantial Responsibility

The NCLC cites Judge Kaufman's law review article, "The Former Government Attorney and the Canons of Professional Ethics," 70 Harv.L.Rev. 657 (1957), as support for its assignment of error in the courts below. However, Judge Kaufman's article, and indeed the case he had recently decided that precipitated publication of the article (*U.S.* v. *Standard Oil Co.*, 136 F. Supp. 345 (S.D.N.Y. 1955)), were premised on a situation involving a *government* claim of disqualification by a former government employee and it therefore sheds no light on the specific problem presented here.

Any impact in the mind of the NCLC of Judge Kaufman's article beyond its intended scope should have been clarified by ABA Formal Opinion 342.

> "As used in DR 9-101(B), 'substantial responsibility' envisages a much closer and more direct relationship than that of a mere perfunctory approval or disapproval of the matter in question. It contemplates a responsibility requiring the official to become personally involved to an important, material degree in the investigative or deliberative processes regarding the transactions or facts in question. Thus, being the chief official in some vast office or organization does not *ipso facto* give that government official or employee the 'substantial responsibility' contemplated by the rule in regard to all the minutiae of facts lodged within that office." (62 A.B.A.J. at 520) [Footnotes omitted.]

The factual record in the court below proves with convincing clarity that Mr. Tyler and Mr. Giuliani did not review any source documents or direct any investigation of the Petitioners. Their function did not overlap with anything remotely connected with the motion to disqualify UAW's trial counsel pending before the District Court. Mr. Tyler had substantial responsibility in the supervisory

process of determining whether under the Guidelines the FBI should be allowed to continue its investigation of the NCLC. To suggest that he was "personally involved to an important, material degree" in the FBI's domestic security investigation of the NCLC itself (even if one could assume that that investigation involved matters that are relevant to the underlying disqualification motion of Cowan and Schlossberg) is ludicrous. See *Allbrand Appliance & Television Co.* v. *Advent Corp.*, 78-2 Trade Cases ¶ 62,371 (S.D.N.Y. 1978).

3. There Is No Appearance of Impropriety

NCLC attributes an appearance of professional impriety to Messrs. Tyler and Giuliani because of their functions in the Department of Justice and thus to the entire firm of PBW&T. Anyone can add inference upon inference and come forth with an arguable hypothesis of the "appearance of impropriety." This is precisely what NCLC has attempted to do. Properly, however, the District Court affirmed by the Court of Appeals, rejected that effort. 466 F. Supp. at 572.

The affirmance of the District Court by the Second Circuit in the instant case is wholly consistent with the decisions of other Circuits as well as other panels of that Circuit:

> "Defendants seem to suggest that the complexities of the factual determination to be made by this court should be avoided by a decision couched in notions of possible appearance of impropriety. On the contrary, the importance of the underlying policy considerations call for careful analysis of the matters embraced by previous and present litigations. Vague or indefinite allegations do not suffice. . . . The danger of damage to public confidence in the legal profession would be great if we were to allow unfounded charges of impropriety to form the sole basis for an unjust disqualification."

Silver Chrysler Plymouth, Inc. v. *Chrysler Motors Corp.*, 370 F. Supp. 581, 589 (E.D.N.Y. 1973), *aff'd*, 518 F.2d 751 (2d Cir. 1975). See *Fund of Funds, Ltd.* v. *Arthur Andersen & Co.*, 567 F.2d 225, 227 (2d Cir. 1977); *International Electronics Corp.* v. *Flanzer*, 527 F.2d 1288, 1295 (2d Cir. 1975); *City of Cleveland* v. *Cleveland Electric Illuminating Co.*, 440 F. Supp. 193, 205-06 (N.D. Ohio 1977), *aff'd without op.*, 573 F.2d 1310 (6th Cir. 1977).

Fortunately, the NCLC's cynicism concerning PBW&T's representation is not the standard to be applied under Canon 9. In *Woods* v. *Covington County Bank*, 537 F.2d 804, 813 (5th Cir. 1976), the Court stated:

> "It does not follow, however, that an attorney's conduct must be governed by standards which can be imputed only to the most cynical members of the public. Inasmuch as attorneys now commonly use disqualification motions for purely strategic purposes, such an extreme approach would often unfairly deny a litigant the counsel of his choosing. Indeed, the more frequently a litigant is delayed or otherwise disadvantaged by the unnecessary disqualification of his lawyer under the appearance of impropriety doctrine, the greater the likelihood of public suspicion of both the bar and the judiciary. An overly broad application of Canon 9, then, would ultimately be self-defeating. Therefore, what has been said with respect to judicial conduct is equally applicable here: a lawyer need not 'yield to every imagined charge of conflict of interest, regardless of the merits, so long as there is a member of the public who believes it . . . Surely there can be some objective content to any inquiry into whether the "appearance of justice [or propriety]" has been compromised in a given case.' J. MacKenzie, The Appearance of Justice 240 (1974). Consequently, while Canon 9 does imply that there need be no proof of actual wrongdoing, we conclude that there must be

at least a reasonable possibility that some specifically identifiable impropriety did in fact occur."

See Fred Weber, Inc. v. *Shell Oil Co.*, 566 F.2d 602, 609 (8th Cir. 1977), *cert. denied*, 436 U.S. 905. *See also*, Van Graafeiland, "Lawyer's Conflict of Interest—A Judge's View," New York State Bar Journal, February, 1978, p. 101.

This is not a case in which a government lawyer has switched sides and represents interests in conflict with his prior representation. This is not a case in which there is any hint that Mr. Tyler and Mr. Giuliani conducted themselves while in the government in a way to encourage their own future private employment with respect to matters handled in government. This is not a case in which there has been any showing of a need to safeguard confidential government information from future use against the government or that the government has any interest whatsoever in the matter. This is not a case in which confidential information obtained in government is being used for the benefit of a private litigant.

In short, no appearance of impropriety does or could exist.

4. The Issues Presented by the Petition are Moot

On June 26, 1979 the District Court entered two orders, the effect of which was to substitute new trial counsel in place of Cowan and Schlossberg (4a), to deny the NCLC's motion to dismiss, and to deny as moot the NCLC's motion to disqualify Cowan and Schlossberg (8a). Since the District Court's order in March 1978 permitting the appearance of PBW&T limited its participation to representing the UAW on the NCLC's motion to dismiss or disqualify (6a), the June 26, 1979 orders terminated PBW&T's appearance in this action. As a result, the motion to disqualify PBW&T is moot.

The purpose of the NCLC's second disqualification motion was to bar PBW&T's participation in the first disqualification motion. Although two courts have rejected the NCLC's contentions, subsequent events have made PBW&T a non-participant. Thus, there is no longer a case or controversy for this Court to decide. *Powell* v. *McCormack*, 395 U.S. 486, 496 n.7 (1969); *Liner* v. *Jafco, Inc.*, 375 U.S. 301, 306 n.3 (1964). A ruling upholding the NCLC's position now would have no effect. *DeFunis* v. *Odegaard*, 416 U.S. 312, 316-17 (1974); *North Carolina* v. *Rice*, 404 U.S. 244, 246 (1971); *Local No. 8-6, Oil, Chemical and Atomic Workers Int'l Union, AFL-CIO* v. *Missouri*, 361 U.S. 363, 367-68 (1960). Because the issues presented here are moot, the Petition should be denied.

CONCLUSION

For the foregoing reasons, it is respectfully requested that the Petition be denied.

Dated: New York, New York
July 13, 1979

Respectfully submitted,

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APPENDIX

Summary Order of the United States District Court of Appeals for the Second Circuit, dated May 15, 1979.

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the fifteenth day of May, one thousand nine hundred and seventy-nine.

Present: HON. WILLIAM H. TIMBERS
Circuit Judge

HON. CHARLES H. TENNEY
District Judge

HON. LEONARD B. SAND
District Judge

79-7069

NATIONAL CAUCUS OF LABOR COMMITTEES, U.S. LABOR PARTY, LYNDON H. LAROUCHE, JR., JENNY LEONARDO, NANCY SPANNAUS, ALAN YUE, KEN MANDEL, CAMPAIGNER PUBLICATIONS, INC., TONY CHAITKIN, THE NATIONAL UNEMPLOYED AND WELFARE RIGHTS ORGANIZATION AND THE INTERNATIONAL PRESS SERVICE,

Defendants-Appellants,

v.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW),

Plaintiff-Appellee.

Appeal from the United States District Court for the Southern District of New York.

Summary Order of the United States District Court of Appeals for the Second Circuit, dated May 15, 1979.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is *affirmed* on the opinion of Judge Pierce dated January 12, 1979.

William H. Timbers
William H. Timbers
United States Circuit Judge

Charles H. Tenney
Charles H. Tenney
United States District Judge

Leonard B. Sand
Leonard B. Sand
United States District Judge

District Court Order, dated March 23, 1978.

UNITED STATES DISTRICT COURT

Southern District of New York

74 Civ. 5131 (LWP)

International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW),
Plaintiff,

vs.

National Caucus of Labor Committees, et al.,
Defendants.

Order

Upon the annexed affidavit of Roger L. Zissu, Esq., and all of the pleadings on file herein, it is hereby

Ordered, that the firm of Patterson, Belknap, Webb & Tyler is added as counsel for the plaintiff for the limited purpose of representing the plaintiff with respect to the defendants' motion to dismiss or to disqualify Roger L. Zissu, Esq., and the firm of Cowan, Liebowitz & Latman, P.C. the plaintiff's counsel herein, and to disqualify Steven Schlossberg, Esq.

Dated: New York, New York
March 23, 1978

L. W. Pierce
U.S.D.J.

District Court Order and Consent for Substitution, dated June 26, 1979.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 74 Civ. 5131 (LWP)

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW),
Plaintiff,

—against—

NATIONAL CAUCUS OF LABOR COMMITTEES, et al.,
Defendants.

ORDER AND CONSENT FOR SUBSTITUTION

The defendants having moved by Notice of Motion dated September 2, 1977 for an order dismissing the complaint and/or for an order disqualifying plaintiff's counsel and disqualifying a potential witness, Gregory Rose, from testifying at the trial herein on the grounds that he was formerly a member of the defendant organizations who was allegedly previously involved in assisting defendants' lawyers in the defense of this action and that such witness may have improperly communicated to plaintiff's counsel privileged information or on the grounds that there would be an appearance of impropriety if defendants' motion were not granted; the plaintiff having denied such allegations and the motion having been referred by the Court to United States Magistrate Kent Sinclair to hear and report thereon; Magistrate Sinclair without an evidentiary hearing, made and filed his Report and Rec-

ommendation on December 2, 1977 that plaintiff's counsel of record, Cowan, Liebowitz & Latman, P.C. and Stephen I. Schlossberg, Esq., of counsel, be disqualified in order to avoid an alleged appearance of impropriety and that the motion to disqualify Mr. Gregory Rose as a witness and to dismiss the complaint herein be denied.

The plaintiff on December 13, 1977 having filed its Objections to the Magistrate's Report and Recommendation and no objections thereto having been filed by the defendants; the Court, on March 23, 1978, allowed the appearance on behalf of the plaintiff of the firm of Patterson, Belknap, Webb & Tyler for the limited purpose of defending against the aforesaid motion.

The defendants, on May 8, 1978, then moved for an order disqualifying Patterson, Belknap, Webb & Tyler from making such a limited appearance for the plaintiff on the grounds of alleged improper access to confidential information about the defendants and an alleged appearance of impropriety; and the Court, after oral argument on October 18, 1978, having by its Opinion and Order dated January 12, 1979 denied such motion, ordered an evidentiary hearing on defendants' first motion to disqualify plaintiff's trial counsel. That hearing was to be limited to aiding the Court in determining whether or to what extent Mr. Gregory Rose had any contact with defendants' legal endeavors in this case and whether he transmitted any of defendants' privileged communications to the plaintiff's trial counsel attorneys.

The defendants having appealed from this Court's Opinion and Order of January 12, 1979, the United States Court of Appeals for the Second Circuit on May 15, 1979 affirmed the denial of the defendants' motion to disqualify Patterson, Belknap, Webb & Tyler on the basis of the Order and Opinion of this Court dated January 12, 1979.

District Court Order and Consent for Substitution, dated June 26, 1979.

The mandate in connection with said appeal from the United States Court of Appeals for the Second Circuit having been issued on June 8, 1979, and thereafter on June 14, 1979 the defendants served a Petition for a Writ of Certiorari to the Second Circuit.

It appears that the plaintiff and its trial attorneys, Cowan, Leibowitz & Latman, P.C., and Stephen I. Schlossberg, of counsel, without admitting the correctness of the Report and Recommendation of Magistrate Sinclair dated December 2, 1977 and in order to avoid further expense and delay in the trial of this action, have herein consented to the substitution of the firm of Cooper, Dunham, Clark, Griffin & Moran as plaintiff's attorneys. It further appears that such substitution terminates the limited appearance by Patterson, Belknap, Webb & Tyler permitted by this Court's order of March 23, 1978,

Now, Therefore, upon the consents and without accepting the Report and Recommendation of Magistrate Sinclair herein, and in the interest of justice, the Court hereby disposes of the matters pending before it as follows:

1. Cooper, Dunham, Clark, Griffin & Moran, Esqs., are hereby substituted in place and in stead of Cowan, Leibowitz & Latman, P.C., and Stephen I. Schlossberg, Esq., as the attorneys for the plaintiff herein.

2. The defendant's motion to disqualify dated September 2, 1977 is hereby dismissed as moot;

3. The trademark and unfair competition claims herein are hereby restored to the Court's ready trial calendar and that trial thereon shall commence on *48 hours* notice on or after September 4, 1979.

District Court Order and Consent for Substitution, dated June 26, 1979.

Dated: New York, New York
June 19, 1979

Consented To:

Cowan, Liebowitz & Latman, P.C.
By Roger L. Zissu
A Member of the Firm
200 East 42nd Street
New York, New York 10017

Stephen I. Schlossberg
Stephen I. Schlossberg
1125 15th Street, N.W.
Washington, D.C. 20005

Plaintiff International Union,
United Automobile, Aerospace &
Agricultural Implement Workers of America (UAW)
By Emil Mazey Sec. Treas.
(Title)

Solidarity House
8000 East Jefferson Avenue
Detroit, Michigan 48214

So Ordered:

June 26, 1979

L.W. Pierce
U.S.D.J.

District Court Order, dated June 26, 1979.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

74 Civ. 5131

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW)

—v.—

NATIONAL CAUCUS OF LABOR COMMITTEES, et al.

ORDER

By notice of motion dated September 2, 1977 and filed September 7, 1977, defendants moved for an order dismissing the complaint and/or disqualifying plaintiff's counsel and disqualifying a potential witness, Gregory Rose. Defendants' motion to dismiss is hereby denied. Since plaintiffs' counsel has been substituted and new counsel has not indicated any intention to contact Gregory Rose or use him as witness, defendants' motion to disqualify is hereby denied as being moot.

So ORDERED.

Dated: New York, New York
June 26, 1979

LAWRENCE W. PIERCE
LAWRENCE W. PIERCE
U. S. D. J.

Rules Involved

Canon 9, A.B.A. Code of Professional Responsibility
"A Lawyer Should Avoid Even the Appearance of Professional Impropriety"

D.R. 9-101(B), A.B.A. Code of Professional Responsibility
"A lawyer shall not accept private employment in a matter in which he had substantial responsibility while he was a public employee."